

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

BERT DALMAYER, *et al.*,

Plaintiffs,

CASE NO. 08-CV-12784

v.

DISTRICT JUDGE THOMAS LUDINGTON  
MAGISTRATE JUDGE CHARLES BINDER

STATE OF MICHIGAN, *et al.*,

Defendants.

---

**MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION  
PURSUANT TO RULE 41(b) OF THE  
FEDERAL RULES OF CIVIL PROCEDURE**

**I. RECOMMENDATION**

**IT IS RECOMMENDED** that the sixty-six Defendants identified below be *sua sponte* **DISMISSED** pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

**II. REPORT**

By order of U.S. District Judge Thomas L. Ludington, this civil rights case was referred to the undersigned Magistrate Judge for general pretrial case management on July 15, 2008. The *pro se* complaint, which was filed on June 30, 2008, asserted claims by 22 plaintiffs against 97 defendants. Following the Court's order of January 29, 2009, sixteen plaintiffs remain.

Pursuant to Rule 4(c)(1) of the Federal Rules of Civil Procedure, "[t]he plaintiff is responsible for service of a summons and complaint within the time allowed under subdivision (m) and shall furnish the person effecting service with the necessary copies of the summons and complaint." FED. R. CIV. P. 4(c)(1). Rule 4(m) provides as follows:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

FED. R. CIV. P. 4(m).

When managing cases involving *pro se* litigants, the Court must take into consideration the difficulties an individual faces in bringing forward their case without the benefit of legal representation. However, the Court must also balance the defendants' right to a fair and timely resolution of the litigation, and therefore *pro se* litigants are not to be accorded any special consideration when they fail to adhere to readily-comprehended court deadlines. *See Jourdan v. Jabe*, 951 F.2d 108, 110 (6th Cir. 1991).

In this case, the 120-day deadline expired over three months ago, and there is no indication that the following 66 defendants were served:

County of Alcona  
County of Montmorency  
Alexandria Edwards  
Barry Getzen  
Charles Bush  
James Colvault  
Donna Pendergast  
Richard Killips  
K. Mikowski  
Mark Trombley  
Bill Jennings  
Karen Brooks  
Robert Topp  
Rod  
Lubelan  
Julin  
Witt  
Lewis  
Draves  
Varoni

Seccia  
Ziecina  
Sosinski  
Casanova  
Oliver  
Smith  
Benjamin  
Jones  
Zeinz  
Labonte  
Byrd  
Simon  
Parks  
Bower  
Harshberger  
Edward Adamiak  
Jim Halverson  
Douglas Ellinger  
Michael Caldwell  
Donald McLennan  
Charles Bush  
Terri Case  
Thomas Weichel  
Rich Schultz  
Robert Mike Hahn  
Randy Servia  
Andrew Ambrose  
Roy Ordway  
Kris McFall  
Leonard Franklin  
Ron McClusky  
Joyce Smarr  
Miranda Smarr  
Jordon Vanacker  
Melody Faunce  
Bradly Vanacker  
Tyler Michley  
Gage Thompson  
Ruthann Pankin Huggler  
Steven Tews  
Karen Frampton  
George H. Foust  
Mike Lamble  
Julie McDonald  
Troy P. Clarke

Dan White

Therefore, I suggest that if Plaintiffs are unable to file objections to this recommendation showing good cause for the failure to serve these defendants, that these defendants be *sua sponte* dismissed from the case.

### **III. REVIEW**

The parties to this action may object to and seek review of this Report and Recommendation within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed.2d 435 (1985); *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). The parties are advised that making some objections, but failing to raise others, will not preserve all the objections a party may have to this Report and Recommendation. *Willis v. Sec'y of Health & Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

s/ **Charles E Binder**

CHARLES E. BINDER  
United States Magistrate Judge

Dated: February 5, 2009

**CERTIFICATION**

I hereby certify that this Report and Recommendation was electronically filed this date, electronically served on James Ferrell, C. Adam Purnell, James Cotant, John Gillooly, G. Gus Morris, Gretchen Olsen and Peter Worden; and served by first class mail on the following individuals at the addresses listed:

Bert Dalmayer and Sue Dalmayer  
2294 Dault St.  
Ossineke, MI 49766-9745

Mike Geddart, I  
401 W. Hubert Rd.  
Spruce, MI 48762

Andrew Giebleyou  
10311 W. M-32  
Herron, MI 49744-9701

Sam Hughes  
204 Wabeek Rd.  
Alpena, MI 49744-8122

Don Lofdlahl  
P.O. Box 733  
Alpena, MI 49707-9579

Lenny Maskell  
1934 W. Midland Rd.  
Auburn, MI 48611

Robert Nolan  
4679 Scott Rd.  
Hubbard Lake, MI 49747-9734

Loretta Udell  
5715 King Settlement Rd.  
Alpena, MI 49707-9531

Lloyd Frey  
3038 State St.  
Ossineke, MI 49766-9760

Mike Geddart, II  
401 W. Hubert Rd.  
Spruce, MI 48762

Ashley Hering  
4679 Scott Rd.  
Hubbard Lake, MI 49747-9734

Carla Ide  
10311 W. M-32  
Herron, MI 49744-9701

Cindy Maskell  
9439 Spruce Rd.  
Ossineke, MI 49766

Sue Maskell  
2092 N. Bagley St.  
Alpena, MI 49707

Philip Sheldon  
1934 W. Midland Rd.  
Auburn, MI 48611

Date: February 5, 2009

By s/Jean L. Broucek  
Case Manager to Magistrate Judge Binder